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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/375,767 08/17/99 SCHNEIDER D DPS*1

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HM22/1206

EXAMINER

LEVY, N

ART UNIT

PAPER NUMBER

1616

DATE MAILED:

12/06/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No. 375767	Applicant(s) Schneider
Examiner Neil Long	Group Art Unit 616
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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period of Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 10/30/00
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-24 is/are pending in the application.
- Of the above claim(s) 12-24 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-11 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claim(s) 1-24 are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

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(1) Applicant's election with traverse of Group I, claims 1-11 in Paper No. 3 is acknowledged.

The traversal is on the ground(s) that Group II requires integral structure of Group I. This is not found persuasive because the 2 groups constitute patentably distinct inventions and require separately burdensome search.

The requirement is still deemed proper and is therefore made FINAL.

(2) Claims 12-24 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Applicant timely traversed the restriction (election) requirement in Paper No. 3.

(3) 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

(4) Claims 1-11 are rejected under 35 U.S.C. 101 because the claimed invention lacks patentable utility. The claimed invention is to retard dissolution but there is no claim to any utility for this process. The purpose of the invention is a shark repellent, not claimed, but there is no demonstration or supportable presentation of any efficacy as shark repellent. Examiner fails to find any support for the usefulness of the invention.

(5) The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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(6) Claims 1-11 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The invention as claimed is not supported by the demonstration that the claimed conglomerate provides any dissolution sufficient to provide useful effect nor is there a description of the best mode. The invention is directed at repelling sharks, a useful utility. However, this utility is neither claimed, or supported by any objective evidence of efficacy. The problem is that no other utility is presented, either

(7) The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

(8) Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(9) The "conglomerate" is indefinitely identified, as the sodium Lauryl sulfate is part of the conglomerate, but to what extent? And the binder is not clearly distinguishable from the sealant, "White glue" and "Caulking Material" are indefinite, as ~~this~~ term could be a chemical identifier, or a functional one. The "drying agent" is not clearly claimed, (as it is in claim 7) as the production function is unsupported by claimed means to Produce "particulate and shapes. "Other" is

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indefinite. Claim 8 is unclear, does the conglomerate include or exclude the coating? Please amend to elucidate.

(10) The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(11) (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(12) (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

(13) Claims 1-8, 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Schneider - 4917280.

(14) Applicants conglomerate, as a pellet is disclosed (col. 2, line 52 - line 22, col. 3) with both water soluble and water proof coatings. Since the instant components and ratios thereof are present, the instant effects also are present, inherently (the claims 6 production function). Further the whole of Fig 2 can be construed as a longitudinal member with constrictions and (76) bulkheads.

(15) Claims 1, 2, 4, 6, 7, 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Gladfelter et al 5234615.

See Fig 2. - An outer sealant (col. 3, Fig. 2 - moisture impervious) covers a pellet in the form of a longitudinal conglomerate with restrictions, inside an outer coating of water soluble

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container (col. 3, line 26-30). Sodium Lauryl sulfate (col. 26) with water soluble binders (col. 25) fillers and drying agents (sodium sulfate) are disclosed.

(16) Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hays in view of Gladfelter et al 5,234,615.

(17) Hays discloses the instant inventive composition, at the instant concentrations except for use of binder.

Gladfelter however, teaches the instant binders. The chemical conglomerate (Hays) is sealed with epoxy (col. 4, line 23-27) a caulking material.

(18) It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize shark composition, to use one of Hays, modified with Gladfelter to provide acceptable application.

Hays teaches one having ordinary skill in the art would be motivated to perform this modification in order to repel Sharks.

(19) Applicant has not provided any objective evidence of criticality, nonobvious or unexpected results that the administration of the particular ingredients' or concentrations provides any greater or different level of prior art expectation as claimed.

(20) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703) -308-2412. The examiner can normally be reached on Tuesday through Friday from 7 AM to 5:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) -308-4628. The fax phone number for the organization where this application or proceeding is assigned is (703) -305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) -308-1235.

Levy/LR

November 28, 2000

A handwritten signature in black ink, appearing to read "Neil S. Levy".

NEIL S. LEVY
PRIMARY EXAMINER